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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

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DAVID D. CROSSETT,

Plaintiff,

v.

TREVOR MIDGLEY, et al.,

Defendants.

**MEMORANDUM DECISION AND  
ORDER DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS  
(DOC. NO. 34)**

Case No. 1:24-cv-00125

District Judge David Barlow

Magistrate Judge Daphne A. Oberg

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Plaintiff David Crossett has filed a motion to proceed *in forma pauperis*.<sup>1</sup> As explained below, because Mr. Crossett has already paid the filing fee and has not demonstrated he qualifies to proceed *in forma pauperis*, his motion is denied.

Under 28 U.S.C. § 1915, a federal court may authorize commencement of an action without prepayment of fees by a person who is unable to pay such fees.<sup>2</sup> To qualify for a fee waiver under § 1915, a party must show a financial inability to pay the required filing fee.<sup>3</sup> The District of Utah's local rules require that "a party's total monthly income must be equal to or below 200% of the United States poverty guideline" to

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<sup>1</sup> (Doc. No. 34.)

<sup>2</sup> 28 U.S.C. § 1915(a)(1).

<sup>3</sup> *Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

qualify.<sup>4</sup> “[P]roceeding [*in forma pauperis*] in a civil case is a privilege, not a right—fundamental or otherwise.”<sup>5</sup> “The decision to grant or deny *in forma pauperis* status under § 1915 lies within the sound discretion of the trial court.”<sup>6</sup>

Here, Mr. Crossett paid the filing fee when he filed this case on July 23, 2024.<sup>7</sup> Therefore, Mr. Crossett has not demonstrated an inability to pay the fee. Additionally, while he reports his individual income is below 200% of the federal poverty guideline, he reports his spouse’s income far exceeds this threshold.<sup>8</sup> Although Mr. Crossett argues spousal income should not be considered,<sup>9</sup> courts have routinely recognized that income of a party’s spouse or other close family members is relevant to determining indigency under 28 U.S.C. § 1915.<sup>10</sup> Considering his spouse’s income, Mr. Crossett

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<sup>4</sup> DUCivR 3-2(a)(1)(A). The local civil rules are available at <https://www.utd.uscourts.gov/sites/utd/files/Civil%20Rules%20Final%202023.pdf>.

<sup>5</sup> *White v. Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998) (second alteration in original) (internal quotation marks omitted).

<sup>6</sup> *Cabrera v. Horgas*, No. 98-4231, 1999 U.S. App. LEXIS 7890, at \*2 (10th Cir. Apr. 23, 1999) (unpublished).

<sup>7</sup> (See Docket Text Entry for Compl., Doc. No. 1 (acknowledging receipt of the filing fee).)

<sup>8</sup> (See Mot. to Proceed In Forma Pauperis 2, Doc. No. 34.)

<sup>9</sup> (See *id.* at 6.)

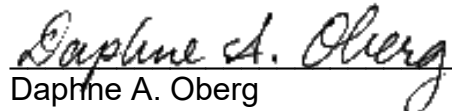
<sup>10</sup> See, e.g., *Martin v. A-1 Elec. Heat & Air*, No. CIV-16-1348-R, 2016 U.S. Dist. LEXIS 181888, at \*2 n.2 (W.D. Okla. Dec. 20, 2016) (unpublished) (“Spousal income is an appropriate consideration when making a determination as to whether an applicant qualifies to proceed in forma pauperis.”); *Zhu v. Countrywide Realty Co.*, 148 F. Supp. 2d 1154, 1155 (D. Kan. 2001) (“In a number of cases, courts have found that the income and assets of close family members are relevant to a determination of indigency under 28 U.S.C. § 1915.”); see also *McKinzy v. Tyson Foods, Inc.*, No. 19-2528, 2019 U.S.

does not qualify for a fee waiver. For all these reasons, Mr. Crossett has not demonstrated he qualifies to proceed *in forma pauperis* under 28 U.S.C. § 1915.

Therefore, Mr. Crossett's motion to proceed *in forma pauperis*<sup>11</sup> is denied.

DATED this 23rd day of October, 2024.

BY THE COURT:

  
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Daphne A. Oberg  
United States Magistrate Judge

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Dist. LEXIS 168909, at \*2 (D. Kan. Sept. 30, 2019) (unpublished) (considering household income in denying a motion to waive the filing fee).

<sup>11</sup> (Doc. No. 34.)